

GEORGE T. OLDS

IBLA 72-93

Decided November 1, 1972

Appeal from a decision by the Nevada State Office (Nev. 5766) rejecting an application for a public sale.

Set aside and remanded.

Public Sales: Sales Under Special Statutes

The Unintentional Trespass Act of September 26, 1968, does not require that an applicant for a sale of public land to be held under its terms be an owner of contiguous public lands as of the date of its enactment; it is enough if an applicant owns such land prior to the expiration date of the Act on September 26, 1971.

APPEARANCES: Ellis R. Ferguson, Esq., of Reno, Nevada, for the appellant.

OPINION BY MR. RITVO

George T. Olds has appealed to the Secretary of the Interior from a decision, dated September 3, 1971, by the Nevada State Office rejecting his application for a public sale of lands under the Unintentional Trespass Act of September 26, 1968, (43 U.S.C. §§ 1431-35 (1970)) on the ground that the appellant had failed to meet the requirements of the Act.

The Unintentional Trespass Act of September 26, 1968, authorizes the Secretary of the Interior to dispose of certain tracts of public lands, not exceeding 120 acres, where such lands are not needed for public purposes and upon which there was an unintentional trespass on or before September 26, 1968. The purpose of the Act was to provide a method for disposition of lands not covered by other statutes. H.R. Rep. No. 1791, 90th Cong., 2nd Sess; 3 U.S. Cong. & Admin. News (1968) 3612.

Under the Act, sale of the land can be initiated by the Secretary on his own motion or upon application of an owner of contiguous lands. In addition to their having been affected by an unintentional trespass, some of the lands in the tract must be shown to have been or be able to be put to cultivation. If the Secretary determines that the lands

are not needed for a public purpose they will be sold at a public auction to the highest bidder. 43 U.S.C. § 1431 (1970). Another section of the Act (43 U.S.C. § 1432) guarantees the preference right of owners to contiguous lands to buy the tract at the highest bid. The authority granted by the Act expired 3 years from the date of its enactment, subject to the right to consummate sales for which application had been filed prior to the expiration date. 43 U.S.C. § 1435 (1970).

On August 18, 1971, Olds submitted his application for the sale of 116.05 acres. It showed the tract of land to be of the type covered by the Act and stated that his improvements of a fence and domestic water well constituted unintentional trespass. Item No. 7 of the application was answered in the affirmative by Olds indicating that he was the sole owner of whole title and fee of land contiguous to the land to be sold. Olds made a desert land entry of contiguous lands on July 16, 1964. His final proof was completed on July 8, 1968, and patent issued on November 24, 1970.

While Olds held a patent on his contiguous land at the date of his application, the State Office pointed out that on September 26, 1968, the date of the Act, Olds was in possession of that land as an entryman of an unpatented desert land entry. It interpreted the Act as requiring ownership of non-federal land as of September 26, 1968, and therefore rejected the application.

We find the rejection of Olds' application improper.

The Act does not, by its language, require the applicant to have been an owner of contiguous land as of September 6, 1968, nor does it require that the applicant have been the unintentional trespasser. That the benefits of the Act are not restricted to the "unintentional trespasser" or to persons qualified on September 26, 1968, is made clear by section 2 of the Act (43 U.S.C. § 1432 (1970)), which gives a preference right to purchase to any owner of contiguous lands and provides for the Secretary to divide the lands in case more than one preference right is asserted. The Act merely requires the applicant to be an owner of contiguous lands.

Olds, having received his patent to contiguous land on November 24, 1970, which was prior to the expiration of the Act on September 25, 1971, was a qualified applicant.

Thus, for this reason alone, it was incorrect to reject Old's application. However, it remains for the State Office to consider it again and determine whether land applied for should be disposed of by auction.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision of the State Office is set aside and remanded for appropriate action in accordance with this decision.

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Martin Ritvo, Member

We concur:

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Joan Thompson, Member

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Douglas E. Henriques, Member

